

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JERRY TONY ORTIZ,

Plaintiff,

v.

No. 13-cv-0786 SWS/SMV

**NIETO ENTERPRISES, LLC;
RICHARD M. NIETO; and
CAROLINA CABRALES-NIETO;**

Defendants,

and

NIETO ENTERPRISES, LLC;

Counterclaimant,

v.

JERRY TONY ORTIZ and AMY ORTIZ,

Counter-defendants.

ORDER TO PAY DEFENDANTS' REASONABLE EXPENSES

THIS MATTER is before the Court on Defendants' counsel's Affidavit Outlining Expenses . . . [Doc. 71] ("Affidavit"), submitted on May 29, 2014. On June 3, 2014, the Court entered its Order Granting in Part and Denying in Part Defendants' Opposed Motion to Compel [Doc. 76] ("Order"). The Order indicated the Court would award Defendants reasonable expenses and attorney fees for preparing their Motion to Compel [Doc. 53] and appearing at the hearing on that motion [Doc. 70]. Defendants' counsel submitted an affidavit requesting

payment of \$5,550.00 for 22.2 hours of work at \$250.00 per hour. [Doc. 71-1] at 1. After the Affidavit was filed, Plaintiff filed a memorandum in opposition on June 6, 2014. [Doc. 77]. Defendants filed a memorandum in support on June 13, 2014. [Doc. 81].

Having considered the briefing and relevant law, the Court finds that apportionment of reasonable expenses under Fed. R. Civ. P. 37(a)(5)(C) is appropriate. The Court also determines that the 22.2 hours of work claimed is somewhat excessive in relation to the motion to compel. After accounting for these factors, the Court finds that the appropriate award for reasonable expenses and attorney fees is \$2,500.00.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff shall pay to Defendants \$2,500.00 pursuant to Fed. R. Civ. P. 37(a)(5)(C) within 15 days.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge